IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7840 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAGNATH MARBLE PVT LTD

Versus

TALATI CUM MANTRI

Appearance:

MR HS MUNSHAW for Petitioner

MR PREMAL JOSHI, A.G.P. for Respondent No. 1, 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 09/11/2000

C.A.V. JUDGEMENT

1. The prayer of the petitioner in this petition is for treating the action of the respondent No.1 as illegal, arbitrary, high-handed and unjust and to direct the respondents to enter the name of the petitioner

Company as owner of the land bearing Survey No.89 of village Bamanbore, Taluka Chotila, District Surendranagar in revenue records and other Government records.

2. The facts giving rise to this petition are briefly as under :

The petitioner company wanted to manufacture polish stone of granite. For this purpose the land was needed by the petitioner company. It approached M/s. Manoj Industries, a Partnership firm for purchase of land for establishing the factory. The negotiation was settled at Rs.75,000/-. Sale Deed was executed and registered on 27.8.1990. The land of Survey No.89 measures 1 Acre - 20 Guntha equivalent to 6070 sq.mtrs. This land was used for Non-Agricultural purpose hence it could be used for residential as well as for industrial purpose. After purchasing the land the petitioner placed order for purchase of machinery to foreign manufacturer of Italy and also for purchasing other infrastructure locally. The project was estimated to Rs.1 Crore. Besides Sale Deed the petitioner obtained approved plan and lay out for construction of premises on 15.10.1990. The development permission was also obtained vide Annexure : D. General Manager, District Industrial Centre, Surendranagar, working under the Industries Department of the State of Gujarat had enrolled the industry on 10.8.1990 vide Annexure : E. Subsequently the Gram Panchayat of Bamanbore had also approved the plan and lay out on 10.11.1990, Annexure : F. Since the land is situated in industrially backward area of District Surendranagar the petitioner was entitled to subsidy at the rate of 25 per cent. The scheme or time limit was expiring by 31.3.1991. The machinery was expected to be installed by 31.1.1991 and the petitioner expected to start manufacturing process by the end of February 1991. The petitioner company was to be financed by the Gujarat State Financial Corporation and State Bank of Saurashtra. However, the petitioner received shocking intimation from Talati - cum - Mantri, the respondent No.1, orally that the land in question cannot be entered in the name of the petitioner company in the revenue record of the Government. This oral information was given to the petitioner on the basis of the orders received by respondent No.1 from higher-ups. Consequently this oral threat of the respondent No.1 has been challenged in this writ petition.

3. In the counter Affidavit the stand of the respondent No.1 has been that the petition is not maintainable because no application for mutation of the

land in the name of the petitioner has been submitted under the provision of the Bambay Land Revenue Code to the Talati. The next objection is that the petitioner has come forward by suppressing material facts which disentitled the petitioner from any relief. The suppression of fact is that the N.A. permission was granted by the Taluka Development Officer in respect of the land in question on 13.10.1981. This order was subsequently cancelled in Appeal by Additional Chief Secretary, Revenue Department (Appeals), State of Gujarat, vide order dated 21.4.1989. The revision was allowed and the order granting N.A. permission by Taluka Development Officer was cancelled. This order cancelling the N.A. permission was passed after hearing the parties, including the Advocate of the 4th respondent of the revision Application. The said order cancelling the N.A. permission has not been challenged or set aside till date hence also there is no merit in the petition which is liable to be dismissed. It is also alleged that the petitioner has obtained plan approved from the office of the Town Planner either by suppression of fact or in collusion and as such on the basis of so called approved plan the petitioner is not entitled to any relief.

4. Shri H.S.Munshaw, learned Counsel for the petitioner and Shri Premal Joshi, learned A.G.P. for the respondents have been heard.

5. Shri Joshi has pointed out that the writ petition has been filed by suppression of material facts, namely, that the N.A. permission granted by the Taluka Development Officer on 13.12.1981 was cancelled in revision on 21.4.1989 and since the petitioner purchased the land on 27.8.1990 it should have made inquiry whether any N.A. permission was required for development of the land for industrial purpose or not and since this was not done it will be presumed that the petitioner had knowledge of cancellation of N.A. permission and this suppression of material fact disentitled the petitioner from any relief. He further argued that since no application for mutation of land in the name of the petitioner has been submitted so far to the Talati cum Mantri under the provisions of the Bombay Land Revenue Code relief B claimed by the petitioner cannot be granted.

6. As against this Shri Munshaw, has referred to the writ petition and also to the rejoinder Affidavit and has argued that since huge amount has been invested in accordance with the development plan sanctioned by the Deputy Town Planner and since the Industry has been

registered and enrolled by the General Manager of District Industrial Centre and also because Gram Panchayat has approved the plan and lay out the petitioner should not be stopped or restrained from running the industry and such action would amount, not only loss to the petitioner, but it would also amount to national loss. He further contended that the order of cancellation of N.A. permission was not in the knowledge of the petitioner when the Sale Deed was executed nor the Gram Panchayat nor the respondent No.1 brought to the notice of the petitioner that N.A. permission has been cancelled, the respondent No.1 was not legally entitled to orally inform the petitioner that the name of the petitioner cannot be entered in revenue records. He further contended that since huge amount has been invested and industry has been established it should not be stopped to carry out manufacturing process.

7. It has to be seen whether the reliefs claimed by the petitioner in this petition can be granted. The first relief is for treating the impugned action of the respondent No.1 as illegal, arbitrary, high-handed and unjust. What is said to be illegal action or impugned action of the respondent No.1 is that he orally intimated the petitioner company that its name cannot be entered in the revenue records or in the Government record. Upon inquiry the petitioner company came to know from Talati cum Mantri, the respondent No.1, that he had received orders to that effect from his higher-ups. This order is nothing but the order in revision cancelling the N.A. permission on 21.4.1989. Even after this oral information the petitioner company did not care to probe the matter further and to know under whose order Talati Cum Mantri gave this information. As a pre-cautionary measure the officer of the company should have inquired the basis on which the respondent No.1 refused to make entry in the revenue records in favour of the petitioner. This silence of the petitioner company tentamounts to suppression of material facts. It is difficult to accept the contention of Shri Munshaw that it was the duty of the respondent No.1 or the Gram Panchayat to intimate the petitioner that N.A. permission was cancelled. Since the sale Deed was obtained by the petitioner on 27.8.1990 and the order granting N.A. permission was cancelled on 21.4.1989 it will be deemed that there was no N.A. permission in existence when the Sale Deed was executed in favour of the petitioner. In the absence of N.A. permission the petitioner was not entitled to establish the factory. It was the duty of the petitioner to make inquiry about the clear title in favour of the seller. That inquiry was not made whether the seller had clear

title by obtaining N.A. permission to sell the land to the petitioner. Suppression of material fact, therefore, disentitles the petitioner of discretionary relief under Article 226 of the Constitution of India. If the Talati cum Mantri, the respondent No.1, intimated the company on the basis of order of the revisional authority regarding cancellation of N.A. permission it cannot be said that such action was in any way illegal. Thus, even oral communication by the respondent No.1 to the petitioner company cannot be said to be illegal, hence such action cannot be treated to be illegal. Relief : A, therefore, cannot be granted.

8. So far as relief : B is concerned, in the counter Affidavit it is clearly mentioned in Para : 2 that no application for mutation of land in the name of the petitioner has been submitted to the Talati cum Mantri under the provisions of the Bombay Land Revenue Code. In the rejoinder Affidavit this fact has not been controverted nor in the course of argument Shri Munshaw could point out that application for mutation was made and it was illegally rejected. If the application for mutation was not made before the Revenue Authority and was not disposed of, this Court cannot grant relief : B by directing the respondent to enter the name of the petitioner company as owner of the land of Survey no.89. As such this relief also cannot be granted.

9. In the result the writ petition has no merit and is bound to fail.

10. Shri Munshaw in the end requested that the petitioner may be permitted to move the application for N.A. permission and also application for mutation of name before the competent Authority and if such application is moved it may be considered sympathetically. Shri Munshaw is not aware of the latest position. The petition was filed in the year 1990. Shri Munshaw pointed out that under the interim order of this Court the factory has been established, but I do not find any interim order of this Court permitting the petitioner to carry out construction. What appears from the writ petition is that the factory was yet to be installed and machinery was to be received from Italy which was to be installed in the factory premises. Other infrastructure was also to be raised in the premises. There is no whisper that manufacturing process is going on. As such estimated expenditure of Rs.1 crore is not the ground for issuing direction that the name of the petitioner company be entered in the revenue record as owner. The Sale Deed in favour of the petitioner company is a registered Sale

Deeed which has not been challenged so far either by the previous owner or by any other party. Consequently the petitioner can apply before the appropriate Authority seeking N.A. permission and also seeking mutation of name in the revenue record and if such application is moved the competent Authority shall, after hearing the petitioner, dispose of the application in accordance with law.

11. With the above observation the writ petition is dismissed with no order as to costs.

sd/-

Date : November 9, 2000 (D. C. Srivastava, J.)

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